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STATE OF ALABAMA

FEB 14 1989

89-00172

Honorable Wallace K. Brown  
Judge of Probate  
P.O. Box 700  
Phenix City, AL 36868-0700

Alabama State Bar - Attorneys -  
Licenses and Permits

No credit is allowed upon the purchase of a business license under §40-12-49 by an attorney for the special membership fee paid by the attorney during the same license year under §34-3-18.

Dear Judge Brown:

This opinion is issued in response to your request for an opinion from the Attorney General.

QUESTION PRESENTED

Basically you have asked may an attorney, who has paid a \$75.00 special membership fee, receive a credit against the license amount required by Code of Alabama 1975, §40-12-49 when said attorney applies for the license under §40-12-49 to engage in the private practice of law within the same tax year.

FACTS AND ANALYSIS

In December 1988, an application was made for the §40-12-49 license in the Probate Office of Russell County by an attorney who had paid the special membership fee with the Alabama State Bar Association. The attorney provided sufficient evidence that the \$75.00 special membership fee had been paid and was good through December 1989. The Probate Office allowed a credit for the \$75.00 special membership fee and issued the license to the attorney upon the payment of the remaining \$75.00 balance. Upon reporting the issuance of a license, the Alabama Department of Revenue informed the Probate Office that the full amount of the §40-12-49 license should have been charged and that no credit should have been allowed. The credit was allowed by the Probate Office based upon information given to it several years ago by, presumably, the State Bar Association.

Code of Alabama 1975, §40-12-49 provides in pertinent part:

Each attorney engaged in the practice of law shall pay an annual license tax of \$150.00 to the state, but none to the county. If such business is conducted as a firm or as a corporation in which more than one lawyer is engaged, each lawyer shall pay such license tax, . . . the funds collected for the issuance of the license tax herein levied shall constitute a separate fund to be disbursed by the Comptroller on order of the board of commissioners of the Alabama state bar. . . .

Code of Alabama 1975, §34-3-18 provides:

All lawyers who are qualified to practice law in Alabama and who are not engaged in active practice may become members of the Alabama bar association by paying directly to the secretary of such association an annual sum equal to 50 percent of the money collected by the state of Alabama from a lawyer as a privilege license tax to engage in the practice of law. Upon the payment of said sum as described in this section, such person shall be entitled to all the privileges and benefits common to other members of such association.

Traditionally, the interpretation given to the phrase "each attorney engaged in the practice of law" by the Alabama Department of Revenue and the Alabama State Bar Association is that such phrase pertains to "attorneys who are engaged in the private practice of law." Attorneys employed by the federal or state government, or attorneys who are not actively engaged in the private practice of law, have not been subject to the license requirements of §40-12-49. However, in order to become a member or to remain a member in good standing with the Alabama State Bar Association, attorneys may pay the \$75.00 fee under §34-3-18, even though they are exempt under §40-12-49. Private practitioners who have paid the license under §40-12-49 are automatically members of the Alabama State Bar Association.

Neither the provisions of §40-12-49 nor §34-3-18 provide a credit for the \$75.00 fee when an attorney makes an application for a license to engage in the practice of law under §40-12-49. Nor is there a written agreement between the Alabama Department of Revenue and the Alabama State Bar Association which would form a basis for instructing the judges of probate to allow a credit against the §40-12-49 license for

applicants who have paid the §34-3-18 fee within the same license year. In addition, no other statutory authority has been discovered which would allow the credit.


CONCLUSION

Based upon the foregoing research and analysis, there is no statutory authority for allowing a credit for payment of the fee under §34-3-18 when an attorney applies for a business license under §40-12-49 within the same tax year.

I hope that this sufficiently answers your question. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

DON SIEGELMAN  
Attorney General  
By-



J. WADE HOPE  
Assistant Attorney General

DS:JWH:ph/6353w